

ANALYSIS OF S. 5 - GOVERNMENT IN THE SUNSHINE ACT

1. Coverage of the Act

The Act, as reported, requires that congressional committee meetings or agency collegial bodies be open to the public except to the extent provided in specific exemptions in the Act. In addition, notice, recording, and disclosure requirements are prescribed.

2. Applicability

Under section 201(a), coverage of the Act extends to all agencies where a collegial body, consisting of two or more employees, at least two of whom are appointed by the President with the advice and consent of the Senate, is authorized to take action on behalf of the Agency. The Committee on Government Operations of the United States Senate in their section-by-section analysis on this particular provision stated that:

The term "collegial body comprising the agency" does not refer to a single individual who heads an agency with the assistance of a staff, nor the staff of an agency. The term is limited solely to the two or more individuals serving on the commission or board which heads the agency (Report No. 94-354, p. 15).

Section 201(a) covers all multiheaded agencies ... (Report No. 95-354, p. 15).

This Act does not, according to the congressional intent, apply to single-headed agencies such as the CIA. It is unclear as to whether the Act applies to USIB, NSC, ICRC, and the 40 Committee. According to the Senate report, any body subject to the Federal Advisory Committee Act would not be governed by S. 5. Though the applicability of the Act is extremely limited, if not non-existent, a short discussion is included below for informational purposes.

3. Administrative Impact

- (a) If the Agency qualifies under section 201(a), then it must, under the provisions of 201(d), make a public announcement at least one week prior to the meeting of the date, place, and subject matter of the meeting, whether open or closed to the public, and the name and

phone number of the official designated to respond to requests about the meeting. Notice of such an announcement is required to be submitted for publication in the Federal Register.

- (b) Section 201(f) will require a qualifying agency to promulgate regulations implementing the Act within 180 days.
- (c) Section 201(g) provides for a judicial remedy to enforce the requirements of this Act and other appropriate relief. Included is a ten-day period to provide an agency with the opportunity to correct any violation of the Act. Expeditious handling of judicial actions under this section is provided for with the defendant required to answer within 20 days after service of the complaint.
- (d) Section 201(j) subjects the qualifying agency to the requirement of annually reporting to Congress regarding its compliance with the Act, to include tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and the description of any litigation brought against the agency in regard to this section.

4. Operational Impact

Section 201(b) provides for the following exemptions from open meetings:

- (a) 201(b) provides ten specific exemptions for closing a meeting to the public and a procedure by which such action is accomplished. Subparagraph 201(b)(1) provides that a meeting may be closed which would disclose information specifically required to be kept secret by an Executive order in the interest of national security or foreign policy and which is properly classified pursuant to such Executive order. Subparagraph 201(b)(2) protects information related solely to the agency's own internal personnel, rules, and practices.
- (b) Subsection (e) requires an agency to keep a transcript or electronic recording of the meetings closed to the public and subsection (g) allows a court to examine the record or other information before ordering its release, or opening a meeting. In discussing this exemption, the Senate Committee Report indicated that if an

agency subject to this section receives information properly classified by another agency and public disclosure of the information is prohibited, the meeting must be closed. The agency would have no discretion, for the law provides that in such a case, the agency must accept on its face the classification placed on the material by the originating agency.

5. Fiscal Impact

None.

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 248 (Mar. 4, 1909, ch. 321, § 142, 35 Stat. 1114).

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

§ 754. Rescue of body of executed offender.

Whoever, by force, rescues or attempts to rescue, from the custody of any marshal or his officers, the dead body of an executed offender, while it is being conveyed to a place of dissection, as provided by section 3567 of this title, or by force rescues or attempts to rescue such body from the place where it has been deposited for dissection in pursuance of said section 3567, shall be fined not more than \$100 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 735.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 249 (Mar. 4, 1909, ch. 321, § 144, 35 Stat. 1114).

Minor changes were made in phraseology.

§ 755. Officer permitting escape.

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or magistrate, voluntarily suffers such prisoner to escape, shall be fined not more than \$2,000 or imprisoned not more than two years, or both; or if he negligently suffers such person to escape, he shall be fined not more than \$500 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 735; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a) (3), 82 Stat. 1115.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., §§ 244, 662e, 665 (Feb. 6, 1905, ch. 454, § 2, 33 Stat. 698; Mar. 4, 1909, ch. 321, §§ 138, 139, 35 Stat. 1113; Mar. 22, 1934, ch. 73, § 4, 48 Stat. 456).

Sections 244, 662e and 665 of title 18, U. S. C., 1940 ed., were consolidated. The two latter sections merely extended application of the former. This section has been greatly condensed by changes in phraseology which do not affect the substance.

Enumeration of "marshal, deputy marshal, ministerial officer, or other person," was omitted as surplusage.

Provision making section applicable to cases of prisoners in custody pending extradition or removal proceedings as well as prisoners convicted of offenses against the United States was likewise omitted as unnecessary.

Changes in phraseology were made.

SENATE REVISION AMENDMENT

The text of this section was changed by Senate amendment in view of the act of June 21, 1947, ch. 111, 61 Stat. 134, which, by amending section 244 of Title 18, U. S. C., became an additional source of this section. See Senate Report No. 1620, amendment No. 8, 80th Cong.

AMENDMENTS

1968—Pub. L. 90-578 substituted "magistrate" for "commissioner".

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 756. Internee of belligerent nation.

Whoever, within the jurisdiction of the United States, aids or entices any person belonging to the armed forces of a belligerent nation or faction who is interned in the United States in accordance with

the law of nations, to escape or attempt to escape from the jurisdiction of the United States or from the limits of internment prescribed, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 735.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 37 (June 15, 1917, ch. 30, title V, § 7, 40 Stat. 223).

Section was divided. Remaining provisions relating to arrest appear in section 3058 of this title.

Minor changes in phraseology were made.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Jurisdiction of offenses, see section 3241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 757. Prisoners of war or enemy aliens.

Whoever procures the escape of any prisoner of war held by the United States or any of its allies, or the escape of any person apprehended or interned as an enemy alien by the United States or any of its allies, or advises, connives at, aids, or assists in such escape, or aids, relieves, transports, harbors, conceals, shelters, protects, holds correspondence with, gives intelligence to, or otherwise assists any such prisoner of war or enemy alien, after his escape from custody, knowing him to be such prisoner of war or enemy alien, or attempts to commit or conspires to commit any of the above acts, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

The provisions of this section shall be in addition to and not in substitution for any other provision of law. (June 25, 1948, ch. 645, 62 Stat. 735.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U. S. C., 1940 ed., § 97b (Apr. 30, 1945, ch. 103, 59 Stat. 101).

The second sentence of section 97b of title 18, U. S. C., 1940 ed., was made a separate paragraph.

Chapter 37.—ESPIONAGE AND CENSORSHIP

Sec.

- 792. Harboring or concealing persons.
- 793. Gathering, transmitting or losing defense information.
- 794. Gathering or delivering defense information to aid foreign government.
- 795. Photographing and sketching defense installations.
- 796. Use of aircraft for photographing defense installations.
- 797. Publication and sale of photographs of defense installations.
- 798. Disclosure of classified information.
- 798. Temporary extension of section 794.
- 799. Violation of regulations of National Aeronautics and Space Administration.

AMENDMENTS

1961—Pub. L. 87-369, § 2, Oct. 4, 1961, 75 Stat. 795, deleted item 791.

1958—Pub. L. 85-568, title III, § 304 (c) (2), July 29, 1958, 72 Stat. 434, added item 799.

1953—Act June 30, 1953, ch. 175, § 3, 67 Stat. 133, added second item 798.

1951—Act Oct. 31, 1951, ch. 635, § 23, 65 Stat. 719, added item 798.

CROSS REFERENCES

Wire or oral communications, authorization for interception, to provide evidence of offenses under this chapter, see section 2516 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 42 section 402; title 50 section 792a.

§ 791. Repealed. Pub. L. 87-369, § 1, Oct. 4, 1961, 75 Stat. 795.

Section, act June 25, 1948, ch. 645, 62 Stat. 736, related to the application of the chapter within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States.

§ 792. Harboring or concealing persons.

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, 62 Stat. 736.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on section 35 of title 50, U. S. C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, § 5, 40 Stat. 219; Mar. 28, 1940, ch. 72, § 2, 54 Stat. 79).

Similar harboring and concealing language was added to section 2383 of this title.

Mandatory punishment provision was rephrased in the alternative.

INDICTMENT FOR VIOLATING THIS SECTION AND SECTIONS 793, 794; LIMITATION PERIOD

Act Sept. 23, 1950, ch. 1024, § 19, 64 Stat. 1005, provides that an indictment for any violation of this section and sections 793 and 794 of this title, other than a violation constituting a capital offense, may be found at any time within ten years next after such violation shall have been committed, but that such section 19 shall not authorize prosecution trial, or punishment for any offense "now" barred by the provisions of existing law.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Harboring and concealing, generally, see section 1071 et seq. of this title.

Jurisdiction of offenses, see section 3241 of this title
Misprision of felony, see section 4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 section 825.

§ 793. Gathering, transmitting or losing defense information.

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone,

wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United

States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. (June 25, 1948, ch. 645, 62 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 18, 64 Stat. 1003.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on sections 31 and 36 of title 50, U. S. C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, ch. 72, § 1, 54 Stat. 79).

Section consolidated sections 31 and 36 of title 50, U. S. C., 1940 ed., War and National Defense.

Words "departments or agencies" were inserted twice in conformity with definitive section 6 of this title to eliminate any possible ambiguity as to scope of section.

The words "or induces or aids another" were omitted wherever occurring as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

AMENDMENTS

1950—Act Sept. 23, 1950, divided section into subdivisions, added laboratories and stations, and places where material or instruments for use in time of war are the subject of research or development to the list of facilities and places to which subsection (a) applies, made subsection (d) applicable only in cases in which possession, access, or control is lawful, added subsection (e) to take care of cases in which possession, access, or control, is unlawful, made subsection (f) applicable to instruments and appliances, as well as to documents, records, etc., and provided by subsection (g) a separate penalty for conspiracy to violate any provisions of this section.

INDICTMENT FOR VIOLATING THIS SECTION; LIMITATION PERIOD

Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

CANAL ZONE

Applicability of section to Canal Zone, see section 14 of this title.

CROSS REFERENCES

Activities affecting armed forces—

Generally, see section 2387 of this title.

During war, see section 2388 of this title.

Classified information, disclosure by Government official, or other person, penalty for, see section 783 (b), (d) of Title 50, War and National Defense and section 798 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as non-mailable, see section 1717 of this title.

Nonmailable letters and writings, see section 1717 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 792, 1717 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 sections 782, 795, 825.

§ 794. Gathering or delivering defense information to aid foreign government.

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. (June 25, 1948, ch. 645, 62 Stat. 737; Sept. 3, 1954, ch. 1261, title II, § 201, 68 Stat. 1219.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on sections 32 and 34 of title 50, U. S. C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 2, 4, 40 Stat. 218, 219).

Section consolidates sections 32 and 34 of title 50, U. S. C., 1940 ed., War and National Defense.

The words "or induces or aids another" were omitted as unnecessary in view of definition of "principal" in section 2 of this title.